

Title 33
Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures

Chapter 37. Regulatory Innovations Programs

§3701. Purpose

This Chapter establishes procedures for voluntary participation in the Louisiana Environmental Regulatory Innovations Programs (LERIP) as provided by R.S. 30:2561 et seq. Its purpose is to provide regulatory flexibility consistent with federal guidelines in exchange for superior environmental performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:**

§3703. Definitions

Administrative Authority—the secretary of the Department of Environmental Quality or the secretary's designee.

Demonstration Project (DP)—a project containing all the elements required in LAC 33:I.3705, which shall intended to be implemented in exchange for regulatory flexibility.

Final Project Agreement (FPA)—the final document agreed upon between the administrative authority ~~secretary~~ and a program participant that specifically states the terms and duration of the proposed project. The final project agreement is an enforceable document.

Regulatory Flexibility—~~exemption by the administrative authority~~ a qualified participant in a regulatory innovations program may be exempted by the secretary from regulations promulgated by the department under this Chapter consistent with federal law and regulation.

Stakeholders—citizens in the communities near the project site, facility workers, government representatives, industry representatives, environmental groups, or other public interest groups with representatives in Louisiana and Louisiana citizens, or other similar interests.

Superior Environmental Performance—

1. a significant decrease of pollution to levels lower than the levels currently

being achieved by the subject facility under applicable law or regulation, where these lower levels are better than required by ~~the~~ applicable law and regulation; or

2. improved social or economic benefits, as determined by the secretary, to the state, ~~as determined by the administrative authority~~, while achieving protection to the environment ~~as required by applicable law and regulation~~ equal to the protection currently being achieved by the subject facility under applicable law and regulation, provided that all requirements under current applicable law and regulation are being achieved by the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:**

§3705. Application for a Demonstration Project

A. An application for a demonstration project (DP) shall be submitted to the administrative authority. The application shall, at a minimum, include:

1. a narrative summary of the DP, including the specific statutes or rules for which an exemption is being sought;
2. a detailed explanation including a demonstration that the DP:
 - a. is at least as protective of the environment and the public health as the method or standard prescribed by the statute or rule that would otherwise apply;
 - b. will provide superior environmental performance;
 - c. will not transfer pollution impacts into a product;
 - d. will identify, if applicable, any proposed transfer of pollutants between media;
 - e. will include verifiable measures of success for project goals;
 - f. will not increase or shift risk to citizens or communities;
 - g. is consistent with federal law and regulation, including any requirement for a federally approved, delegated, authorized, or implemented program or plan or authorized program; and

h. reduces the time and money spent at the facility on paperwork and other administrative tasks that do not directly benefit the environment;

3. an implementation schedule that includes a proposal for monitoring, recordkeeping, and/or reporting, where appropriate, of environmental performance and compliance under the DP;

4. a plan to identify and contact stakeholders, to advise stakeholders of the facts and nature of the project, and to request stakeholder participation and review. Stakeholder participation and review shall occur during the development, consideration, and implementation stages of the DP. The plan shall also include notice to the employees of the facility to be covered by the proposed project and a description of efforts made or proposed to achieve local community support;

5. the time period for which the exemption is sought; and

6. any other information requested from the applicant by the administrative authority during the application period.

B. The application shall be signed by the applicant or its duly authorized agent and shall certify that all information is true, accurate, and complete to the best of that person's knowledge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:**

§3707. Demonstration Project Priority System

A. Priority will be given to projects after considering whether the technology:

1. will result in significant pollution prevention or source reduction, particularly in low income areas already burdened with pollution;

2. will reduce air emissions in a nonattainment area;

3. will maintain or improve coastal wetland environments;

4. will be transferable to other members of the regulated community; and

5. will allow the department, the applicant, and other state and local agencies to spend less time and resources over the long term to monitor and administer the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:**

§3709. Review of Application for Demonstration Project

A. Within 180 days after submittal of an complete application for a DP, the department will conduct a review and notify the applicant of theits initial decision regarding acceptability of the proposed project.

B. The department will consider, among other factors, the applicant's compliance history and efforts made to involve the stakeholders and to achieve local community support.

C. If the department determines the DP to be unacceptable, it will provide written reasons for the determination.

D. A DP that has been determined to be unacceptable may be resubmitted in accordance with Subsection A of this Section provided all reasons for the unacceptable determination have been addressed.

E. The department will not approve any DP as a FPA if it requires prior approval by the USEPA, until the USEPA has formally approved all regulatory flexibility necessary for execution of the FPA. When an application for a DP includes regulatory flexibility that may affect a federal requirement or a state requirement that implements a federally approved, delegated, authorized, or implemented program or plan, the department shall submit a copy of the application to the USEPA for review and approval.

~~DE.~~ If the department determines the DP to be acceptable:

1. a public hearing will be held at a location near the proposed project to receive comments;
2. public comments will be received for 30 days after the hearing;
3. a response summary addressing the major issues raised during the comment period will be prepared by the department;
4. an applicant may be required to supplement or modify the application;
5. a recommendation will be made to the administrative authority to approve or deny the project; and

6. a FPA will be executed or a denial issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:**

§3711. Public Notice

A. An applicant whose DP has been approved shall publish notice of the FPA in the official journal of the parish governing authority where the project will be implemented. Notice under this Section shall, at a minimum, include:

1. a brief description of the FPA and of the business conducted at the facility;
2. the name and address of the applicant and, if different, the location of the facility for which regulatory flexibility is sought, and a brief description of the regulatory relief that has been granted; and
3. the name, address, and telephone number of a department contact person from whom interested persons may obtain further information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:**

§3713. Amendment or Renewal

A. An application for amendment or renewal of a FPA shall be filed in the same manner as an original application under this Chapter.

B. If amendment or renewal procedures have been initiated at least 120 days prior to the FPA expiration date, the existing FPA will remain in effect and will not expire until the administrative authority has made a final decision on the amendment or renewal.

C. The administrative authority shall determine whether a public hearing will be held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:**

§3715. Termination

A. By the Recipient

1. A party to a FPA may terminate the FPA at any time by sending notice of termination to the administrative authority by certified mail.

2. The party terminating must be in compliance with all existing statutes or regulations at the time of termination.

B. By the Department

1. Noncompliance with the terms and conditions of a FPA or any provision of this Chapter may result in the FPA being voided, except that the recipient shall be given written notice of the noncompliance and provided an opportunity, not less than 30 days from the date the notice was mailed, to show cause why the FPA should not be voided. Procedures for requesting a show cause hearing before the Division of Administrative Law shall be included in the written notice.

2. In the event more stringent or more protective regulations become effective after execution of a FPA, the recipient shall amend or modify the FPA to provide environmental protection equal to the new regulation pursuant to department and EPA approval, or the FPA will be voided.

23. In the event a FPA becomes void, the administrative authority may specify an appropriate and reasonable transition period to allow the recipient to come into full compliance with all existing statutory and regulatory requirements, including time to apply for any necessary agency permits, authorizations, or certifications.

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